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October 10, 2018

Mr. John Dale
Cannabis Consumers for Liberty
239 W. Jackson Blvd.
Spearfish, SD 57783

RECEIVED
OCT 11 2018
S.D. SEC. OF STATE

Dear Mr. Dale:

Pursuant to SDCL 12-13-25, this office is required to review each initiated measure. Further, this office is required by SDCL 12-13-24 to determine if each initiated measure is written in clear and coherent manner in the style and form of other legislation and that it is worded so that the effect of the initiated measure is not misleading or likely to cause confusion among voters. You are under no obligation to accept any of the suggestions contained in this letter, but please keep in mind the legal standards established in SDCL 12-13-24.

The title of initiated measures is provided by the Office of the Attorney General under § 12-13-25.1, therefore you should remove the title on this measure.

Under section 1, which provides a definition of "cannabis," most of the definition includes the aspects of the plant, but also includes "accessories," "growing implements," "means of processing," and other non-plant terms. This could cause confusion as these non-plant terms do not constitute "cannabis." These non-plant terms should therefore be removed from the definition of "cannabis." You may consider defining these terms separately if the terms would need to be defined differently than can be found in a dictionary.

Under section 8 of the revised draft, the language calls for the Department of Agriculture to provide standards of testing to be conducted on surrendered cannabis. These standards would need to be developed by the department under the Administrative Procedure Act located in chapter 1-26. We recommend adding language to that effect.

Under section 10 of the revised draft, the first sentence requires a person under age 21 to display a doctor's recommendation or an employer permission document. This sentence is redundant to sections 8 and 9 of the revised draft, which also require these documents to be displayed. The sentence should therefore be removed.

Under section 12 of the revised draft, the language references "revenue generated from licensure fees," however there is no reference to any licenses being created nor to any fees being charged for those licenses. This language needs to be clarified either by creating the licenses and fees to which this section would refer or by removing the reference to these licenses and fees from this section.

Under section 14 of the revised draft, the language prohibits any locality from restricting or providing for the location of operation of a cannabis-related business, but two sentences later restricts localities from zoning in a manner that is "discriminatory to a cannabis-related business." The first sentence prohibits zoning while the third sentence assumes zoning will occur. This creates a conflict in this section that would cause confusion. The language on zoning therefore needs to be clarified.

Mr. John Dale
October 10, 2018
Page 2

Under section 16 of the revised draft, the language attempts to preempt existing statute regarding cannabis. To preempt or supersede existing statute, consider either amending or repealing any existing statute that would be in conflict with this Act.

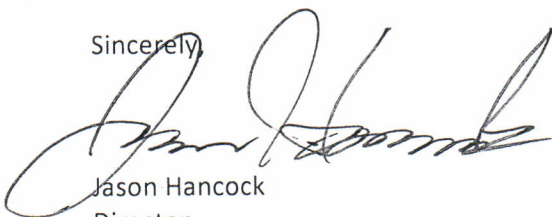
Under rule adopted by the Drug Enforcement Agency, published in 21 C.F.R. Part 1308, all extracts of marijuana that contain cannabidiol also contain at least small amounts of other cannabinoids. These extracts of marijuana, therefore, remain in Schedule I of the Federal Controlled Substances Act under 21 U.S.C. § 802(16). While the Agency suggested in footnote that "it might be theoretically possible to produce a CBD extract that contains absolutely no amounts of other cannabinoids, the DEA is not aware of any industrially-utilized methods that have achieved that result." As such, even if this initiated measure were adopted in South Dakota, a person who uses or possesses CBD in South Dakota may still be subject to federal legal penalties.

Attached is a copy of your proposed constitutional amendment with our suggested changes. If you have any questions regarding our suggested changes, please feel free to contact me.

It has been determined during this review that this proposed initiated amendment to the Constitution may have an impact on revenues, expenditures, or fiscal liability of the state and its agencies and political subdivisions. Please provide the Legislative Research Council a copy of the amendment as submitted in final form to the Attorney General, so we can develop any required fiscal note.

This letter constitutes neither an endorsement of your initiated measure nor a guarantee of its sufficiency. It does constitute fulfillment of your responsibility pursuant to SDCL 12-13-25 to submit your draft to this office for review and comment. If you proceed with your initiated measure, please take care to ensure that your statements or advertising do not imply that this office endorses or approves your proposal.

Sincerely,



Jason Hancock
Director

JH:WC:ct

Enclosure

CC: The Honorable Shantel Krebs, Secretary of State
The Honorable Marty Jackley, Attorney General

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Be it enacted by the people of South Dakota:

~~An Act to provide certain provisions regarding the legalization of cannabis, to take effect immediately upon passage.~~

Section 1. That the code be amended by adding a NEW SECTION to read:

As used in this Act, cannabis means ~~all parts~~ any part of the plant genus ~~Cannabis~~ Cannabis spp containing one or more of the cannabinoids tetrahydrocannabinol (THC), cannabidiol (CBD), and cannabigerol (CBG), whether growing or not, whether living or not, whether in vegetative or flowering stages, ~~cannabis accessories, cannabis growing implements, means of processing cannabis, means of transporting cannabis, means of reselling cannabis,~~ and cannabis seeds.

Section 2. That the code be amended by adding a NEW SECTION to read:

No law enforcement agency in the state ~~or nor~~ any agent of the state may enforce any federal ~~cannabis~~ law regarding cannabis.

Section 3. That the code be amended by adding a NEW SECTION to read:

A person's right to keep and bear arms may not be infringed for possessing cannabis in accordance with the provisions of this Act.

Section 4. That the code be amended by adding a NEW SECTION to read:

No charge may be brought under chapter 32-23 for consumed ~~Cannabis-cannabis~~ metabolites. No law enforcement agency in the state ~~or~~ nor any agent of the state may keep any record, whether written, electronic, digital, or otherwise, based on a finding that cannabis plant matter or its metabolites are found on a person's body or breath or in the person's possession.

Section 5. That the code be amended by adding a NEW SECTION to read:

Any person under twenty-one years of age who is working in the agriculture industry with a letter from the person's employer describing the legal duties performed by the ~~underage~~ person may handle cannabis products having greater than three percent tetrahydrocannabinol.

Section 6. That the code be amended by adding a NEW SECTION to read:

Any person under age twenty-one who possesses a doctor's recommendation describing the person's medical condition that requires cannabis as medication may possess and ingest cannabis having greater than three percent tetrahydrocannabinol.

Section 7. That the code be amended by adding a NEW SECTION to read:

Any person under age twenty-one ~~in possession of~~ who possesses cannabis plant material containing greater than three percent

tetrahydrocannabinol without an employer letter ~~and without~~ under section 5 of this Act or a doctor's recommendation ~~pursuant to this section under section 6 of this Act~~ is subject to a penalty of ten hours of community service for each offense, not to exceed one hundred hours in any calendar year, and shall surrender the plant material to a law enforcement ~~agents of agency in~~ the state.

Section 8. That the code be amended by adding a NEW SECTION to read:

The cannabis plant material surrendered under section 7 of this Act shall be tested by agents of the state in accordance with ~~ISO/IEC 17025:2005~~ standards deemed ~~applicable~~ appropriate by the South Dakota Department of Agriculture, ~~and~~ The secretary of agriculture shall promulgate rules pursuant to chapter 1-26 to establish and implement the standards under this section. The standards shall be in accordance with the general requirements for the competence of testing as published by the International Organization for Standardization under ISO/IEC 17025:2005. The plant material tested under this section shall be catalogued without retaining or associating any personally identifying information about the person from whom the plant material was obtained. Any cannabis plant material that is confiscated under this section shall be destroyed after testing. At least once per year the ~~state department~~ shall issue a report disclosing test results and overall weight of confiscated cannabis.

Section 9. That the code be amended by adding a NEW SECTION to read:

Any person who sells or distributes ~~Cannabis~~ cannabis to any other person under age twenty-one who does not have a doctor's recommendation under section 5 of this Act shall be subject to ~~100-one~~ hundred hours of community service for each offense, not to exceed ~~200-~~ two hundred hours in any calendar year, after which the ~~offender-person~~ shall pay a one thousand dollar fine per offense.

Section 10. That the code be amended by adding a NEW SECTION to read:

~~Any person under age twenty-one who is found to be in possession of cannabis containing more than three percent tetrahydrocannabinol shall display a doctor's recommendation or an employee permission letter that verifies the person's cannabis possession privileges. If a person cannot display the documentation required under this section~~ 8 of this Act or section 9 of this Act to an official at the time of cannabis possession, the person may display the documentation to a court of competent jurisdiction within thirty days of the offense to avoid prosecution ~~in accordance with the provisions under section 7~~ of this Act.

Section ~~611~~. That the code be amended by adding a NEW SECTION to read:

The ~~South Dakota Department of Agriculture~~ secretary of agriculture shall promulgate rules pursuant to chapter 1-26 regarding the

manufacture, sale, and transport of cannabis in the state ~~in accordance~~
consistent with the provisions of this Act.

Section ~~7~~12. That the code be amended by adding a NEW SECTION to read:

Any revenue generated from licensure fees under this Act ~~that is~~ in excess of the amount required to implement ~~any provision the provisions~~ of this Act shall be ~~granted~~ awarded by grant to South Dakota small farmers. The grants shall be ~~used~~ awarded to support early-stage, high-risk local agriculture new venture, research, and development. The grants ~~shall~~ may only be awarded to proof of concept projects that are already completed, ~~taking into account using~~ the ratio of investment-level-to-value of the expressed entrepreneurial idea as a key criterion for the award. The secretary of agriculture shall promulgate by rule pursuant to chapter 1-26 the criteria for any grant under this section.

Section ~~8~~13. That the code be amended by adding a NEW SECTION to read:

No court may determine parental suitability based on the parent's use or possession of cannabis when deciding a child custody case under chapter 25-4A.

Section ~~9~~14. That the code be amended by adding a NEW SECTION to read:

No locality may pass any ~~law, ordinance, or regulation~~ that restricts

or ~~controls~~ provides for the location of operation of a cannabis-related business. No locality may tax, ~~regulate, control,~~ or pass any ~~law or regulation ordinance~~ governing the use or consumption of cannabis. No locality may enact any zoning requirement that is discriminatory to a cannabis-related business. A locality may require a standard business license to conduct cannabis sales within the ~~locality's jurisdiction~~ locality. No locality may ban home cultivation or any other cultivation of cannabis.

Section ~~4015~~. That the code be amended by adding a NEW SECTION to read:

Nothing in this Act ~~may be interpreted to grant grants~~ the right of an employee to use cannabis while at a workplace, nor ~~to remove limits~~ the right of employers to enact workplace policies that restrict or prohibit the use of cannabis in the workplace. Nothing in this Act may ~~be interpreted to prohibit prohibits~~ a landowner from restricting or prohibiting the use of cannabis on the landowner's private property.

Section ~~4416~~. That the code be amended by adding a NEW SECTION to read:

~~No legacy provisions in South Dakota codified law may be interpreted to supercede the provisions of this Act. No state law enforcement agency in the state or nor any agent of the state shall may enforce provisions of south dakota code pertaining to cannabis not specified under the provisions of this Act~~ any law regarding cannabis other

than as provided in this Act.